



Comptroller General
of the United States

Washington, D.C. 20548

Matter of: American Imaging Services, Inc.

File: B-246124.2

Date: February 13, 1992

John E. Menechino, Jr., Esq., Smith, Currie & Hancock, for the protester.
Paul J. Coelus, Esq., Department of the Air Force, for the agency.
Anne B. Perry, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in preparation of the decision.

DIGEST

Agency improperly determined to issue blanket purchase agreements under small purchase procedures on an unrestricted basis, rather than using a small business set-aside, where the contracting officer failed to undertake reasonable efforts to ascertain whether quotations from at least two responsible small business concerns would be received.

DECISION

American Imaging Services, Inc. (AISI) protests the Department of the Air Force's decision to issue a series of blanket purchase agreements for certain maintenance services under small purchase procedures on an unrestricted basis, rather than using a small business set-aside. AISI alleges that the contracting officer failed to justify his determination that quotations would not be received from at least two responsible small businesses.

We sustain the protest.

On March 1, 1991, the agency synopsisized in the Commerce Business Daily (CBD) an unrestricted procurement for preventive maintenance and on-call remedial maintenance of government-owned medical equipment at Wilford Hall Medical Center, Lackland Air Force Base, Texas. Request for proposals (RFP) No. F41636-91-R-0168, which included a 10-percent evaluation preference for small disadvantaged business concerns (SDB), was issued for this requirement on June 13. Four proposals were received, two of which were from small businesses--one of which was determined to be

technically unacceptable. The agency awarded a contract under this solicitation to Linc Equipment Services on September 30. AISI, an SDB, protested to our Office on October 7, alleging that the Air Force had misapplied the evaluation preference, and that a proper application would have resulted in award to AISI as the lowest priced, technically acceptable offeror.

After the protest was filed, on October 16, the Air Force terminated Linc's contract on the basis that: (1) multiple awards should have been made, and (2) the requirements for the services had decreased significantly. On October 31, the Air Force requested that our Office dismiss AISI's protest on the grounds that termination of the contract and cancellation of the solicitation rendered the protest academic. The agency also noted that it was contemplating negotiating competitive blanket purchase agreements (BPA) under small purchase procedure, with Linc, AISI, and General Electric, the three technically acceptable offerors under the canceled solicitation, for the required services. Because of the termination and cancellation, on November 13, we dismissed AISI's protest as academic.

On November 14, the contracting officer determined that, based on the responses to the original solicitation, there was no reasonable expectation of receiving quotations for the BPAs from at least two responsible small business concerns. AISI challenges this determination, asserting that the contracting officer did not undertake reasonable efforts to ascertain whether there is a reasonable likelihood of receiving offers from at least two responsible small business concerns for the reduced requirement.

An acquisition of services procured under small purchase procedures is required to be set aside exclusively for small business participation unless "the contracting officer determines there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns . . . that will be competitive in terms of market price, quality, and delivery" Federal Acquisition Regulation (FAR) § 13.105(d)(2). Generally, we regard such a determination as a matter of business judgment within the contracting officer's discretion which we will not disturb

¹Certain significant pieces of medical equipment had been taken out of service or moved and the contract term was shortened.

²FAR § 13.204(c) provides that BPAs are not exempt from the requirements governing small business-small purchase set-asides.

absent a showing of that it was unreasonable. Library Sys. & Services/Internet Sys. Inc., B-244432, Oct. 16, 1991, 91-2 CPD ¶ 337. However, the agency must undertake reasonable efforts to ascertain whether it is likely that it will receive offers from at least two small business concerns with the capabilities to perform the work, and we will review a procurement to determine whether the agency has done so. Stay, Inc., 69 Comp. Gen. 730 (1990), 90-2 CPD ¶ 248.

Here, the contracting officer determined that there was not a reasonable expectation of receiving quotations from at least two responsible small business concerns solely on the basis that only two offers from small businesses were received in response to the unrestricted competition, and one was technically unacceptable. We do not consider this determination to be reasonably founded.

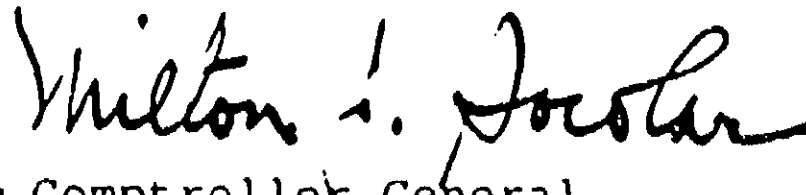
While the use of any particular method of assessing the availability of small businesses is not required, measures such as prior procurement history, market surveys and/or advice from the agency's small business specialist and technical personnel may all constitute adequate grounds for a contracting officer's decision not to set aside a procurement. Raven Servs. Corp., B-243911, Aug. 27, 1991, 91-2 CPD ¶ 203.

The agency terminated the initial contract and canceled the underlying solicitation because its requirement had greatly decreased and it determined that it would be in the government's best interest to award multiple contracts rather than one "total package" contract. The agency does not explain, nor does the record suggest, the link between the failure to receive two acceptable small business offers under an unrestricted solicitation for a large quantity of services and an anticipated failure to receive such offers under a restricted small purchase procurement for a significantly limited quantity of services. It appears reasonable to expect, absent any other evidence, that more small business concerns would be able to compete for the reduced acquisition.

We sustain the protest because the contracting officer's reliance on a procurement dissimilar in size and scope as the sole basis for his determination that quotations would not be received from at least two responsible small business concerns is unreasonable. We recommend that the Air Force take appropriate measures to reasonably determine whether quotations can be expected from at least two responsible small business concerns, and to take the appropriate action

depending on the outcome of this review. We also find that the protester is entitled to recover the reasonable costs of filing and pursuing its protest including attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1991).

The protest is sustained.

for 
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